section 74(2). The order for disqualification for 6 months is set aside and the case is remitted to the magistrate for him to consider and find any special reasons which must be relevant to the offence and not to the offender, with the direction that in the absence of any special reasons, he will order a disqualification for the statutory minimum period of 12 months.

Order accordingly.

Solicitors: *R. C. M. Rayan & Co.*

LIM HOCK SIEW & ORS. v. THE MINISTER OF THE INTERIOR & DEFENCE

[O.C.J. (Wee Chong Jin C.J.) November 17, 1967]
[Singapore — Habeas Corpus No. 2 of 1967]

Habeas Corpus — Illegal detention — Discretion to detain vested in the President — Direction under s. 8(1A) to continue detention of a person must be made by President — How exercise of power is to be signified — Internal Security Act, 1960, s. 8(1) and (1A) — Interpretation Act, 1965, s. 34.

Administrative Law — Detention under Internal Security Act, 1960 — Order of, after expiry of period — Exercise of power by President — How signified.

This was an application by six persons who were being detained under the Internal Security Act, 1960 for a writ of *habeas corpus*. The applicants alleged that their detention was illegal or improper. The applicants had been originally detained under the Preservation of Public Security Ordnance, 1955, and subsequently the orders of detention were purported to be extended by direction orders issued under section 8(1A) of the Internal Security Act. The orders were signed by the Permanent Secretary to the Ministry of the Interior and Defence and recited that "the Minister hereby directs" the person named to be detained for a further period of two years.

Held, granting the application: (1) under section 8(1A) of the Internal Security Act, the power to continue the detention of a person detained under an order of detention after the expiry of the period of detention is vested in the President and only the President can direct that the period of the order of detention be extended;

(2) the President can signify the exercise of his power either personally or in accordance with section 34 of the Interpretation Act under the hand of a Minister or of the Secretary to the Cabinet;

(3) the five orders or directions in this application were *ex facie* not made under the hand of the President nor were they in compliance with section 34 of the Interpretation Act and therefore they were *ex facie* defective orders and unlawful;

(4) as the orders were defective they do not provide legal justification for the detention of the applicants and an order must be made for their discharge.

Case referred to:—

(1) *Greene* v. *Secretary of State for Home Affairs* [1941] 3 All E.R. 388.

HABEAS CORPUS.

T. T. Rajah for the applicants.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is a joint application by six persons, who are being detained under the Internal Security Act, 1960, for a writ of *habeas corpus*. They allege that their detention is illegal or improper.

The affidavits filed in these proceedings disclose the following undisputed facts. The first applicant, Lim Hock Siew, a medical practitioner, was arrested on the 2nd February 1963. At the time of his arrest he was a Central Executive Committee member of the Barisan Sosialis, a political party. On the 16th February 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955, the detention order being for a period of one year from the 16th February 1963. The period of his detention was extended for a further period of twelve months by an order made on 1st February 1964 under section 3(1)(b) of the same Ordinance. On the 1st February 1965 the Minister of Interior of Malaysia made an order under section 8(1)(a) of the Internal Security Act, 1960, directing that he be detained for a period of two years. On the 1st February 1967, the Minister of the Interior and Defence of the Republic of Singapore made an order under section 8(1A) of the Internal Security Act, 1960, directing that he be detained for a further period of two years and this order was signed by the Permanent Secretary of that Ministry. He is presently being detained under the order of the 1st February 1967.

The second applicant, A. Mahadeva, was also arrested on the 2nd February 1963. At the time of his arrest he was a journalist and was the General Secretary of the Singapore Journalists Union. On the 16th February 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955, the detention order being for a period of one year from the 16th February 1963. He remained in continuous detention under orders made similar to those made in the case of the first applicant and is presently being detained under an order dated 18th February 1967 made by the Minister of the Interior and Defence under section 8(1A) of the Internal Security Act, 1960, and signed by the Permanent Secretary of that Ministry.

The third applicant, Ho Piao, a trade unionist, was also arrested on the 2nd February 1963. At the time of his arrest he was the General Secretary of the now banned Singapore National Seamen's Union. On the 16th February 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955

the detention order being for a period of one year. He remained in continuous detention under orders made similar to those made in the case of the first applicant and is presently being detained under an order dated 1st February 1967 made by the Minister of the Interior and Defence under section 8(1A) of the Internal Security Act, 1960.

The fourth applicant, Yan Chiang Ding was at the time of his arrest on the 2nd February 1963 a third year student at the Nanyang University of Singapore. On the 16th February 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955, the detention order being for a period of two years. He remained in continuous detention under orders similar to those made in the case of the first applicant and is presently being detained under an order dated 1st February 1967 made by the Minister of the Interior and Defence under section 8(1A) of the Internal Security Act, 1960 and signed by the Permanent Secretary of that Ministry.

The fifth applicant, Lee Tze Tong, a trade unionist and an elected member of Parliament under the 1963 elections was arrested on the 8th October 1963. On the 23rd October 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955, the detention order being for a period of two years. On the 23rd October 1965 the Minister of the Interior and Defence made an order under section 8(1A) of the Internal Security Act, 1960 directing that he be detained for a further period of two years.

The sixth applicant, Chia Thye Poh, a member of the Barisan Sosialis and a former member of Parliament who resigned his seat in 1966 was arrested on the 29th October 1966 and on the 28th November 1966 the Minister of the Interior and Defence made an order under section 8(1)(a) of the Internal Security Act, 1960, directing that he be detained for a period of two years.

The applicants allege that they are being illegally or improperly detained by the Minister of the Interior and Defence and by the Government of Singapore. They put forward two main contentions.

The first contention is put forward on behalf of all except the sixth applicant, Chia Thye Poh. It is submitted that the orders of detention made by the Minister of the Interior and Defence under section 8(1A) of the Internal Security Act, 1960, and under which they are presently detained are bad on their face and technically defective because the Mininter had no power to make any order under section 8(1A) of that Act.

It is necessary therefore to examine the material provisions of section 8 and they are as follows:—

"(1) If the President is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order —

(a) directing that such person be detained for any period not exceeding two years;

.....

(1A) The President may direct that the period of any order made under subsection (1) be extended for a period or periods not exceeding two years at a time."

"Minister" is defined in section 2 as the Minister charged with responsibility for internal security.

The order made by the Minister under section 8(1A) in respect of the first applicant Lim Hock Siew is as follows:—

"INTERNAL SECURITY ACT, 1960
EXTENTION OF ORDER OF DETENTION
Section 8(1A)

To:

Director of Prisons,
Singapore.

and to:

The Commissioner of Police, Singapore, all other police officers, and all others whom it may concern.

Whereas the President of Singapore is satisfied with respect to the undermentioned person that, with a view to preventing that person from acting in any manner prejudicial to the security of Singapore/the maintenance of public order therein/the maintenance of essential services therein, it is necessary to make the following order:

Now therefore, in exercise of the powers conferred by section 8(1A) of the Internal Security Act, 1960, the Minister hereby, by this Order, directs that the undermentioned person forthwith be detained for a further period of TWO YEARS in "E DORMITORY", CHANGI PRISON, SINGAPORE, or in such other place as the Minister may from time to time direct.

Name of Detainee	*N.R.I.C. No.*
S'PORE/144 LIM HOCK SIEW @ BRASSO	S3T 04740

Sd:
Permanent Secretary,
Ministry of the Interior & Defence,
Singapore.

Dated this 1st day of February, 1967."

Four other orders in identical terms, except the dates, were made in respect of the second, third, fourth and fifth applicants. In my opinion it is clear from the language of section 8 of the Act that the legislature has entrusted the absolute power or the complete discretion to detain a person under the Internal Security Act, 1960, to the President and not to the Minister charged with the responsibility for internal security. Under the Act, a person can only be detained initially for a period not exceeding two years, if the President is satisfied with respect to that person, that with a view to

preventing that person from acting in any manner prejudicial to the security of Singapore or any part thereof or of the maintenance of public order or essential services therein, it is necessary to direct that that person be detained. Once the President is so satisfied then section 8(1)(a) requires the Minister charged with the responsibility for internal security to make an order directing that such person be detained accordingly. The making of an order of detention in respect of a person by the Minister under section 8(1)(a) is in my opinion merely the performance of an administrative function in compliance with an executive decision of the President that it is necessary to direct that the person be detained.

Next, section 8(1A) gives power to continue the detention of a person detained under an order of detention after the expiration of the period of detention specified in the initial detention order, by giving the President the power to direct that the period of any order made under section 8(1)(a) be extended for a further period or periods not exceeding two years at a time. In clear and simple language the legislature has thus entrusted the power to continue the detention of a detainee to the President and not to the Minister and this is clearly in conformity with the power vested in the President alone by the legislature by section 8(1)(a) to detain a person in the first place.

In what manner then must the President make known to a detainee that he, the President, is directing that the period of his detention is extended for a further period of time? In my opinion, either by the President making the direction under his own hand or in accordance with the provisions of section 34 of the Interpretation Act, 1965, which is in the following terms:—

"34. Where any power is conferred upon the President to make subsidiary legislation or appointment, give any directions, issue any order, authorise any thing or matter to be done, grant any exemption, remit any fee or penalty or exercise any other power under any written law, it shall be sufficient if the exercise of such power by the President be signified under the hand of any Minister or of the Secretary to the Cabinet:

Provided always that the foregoing shall not apply to the power of the President to make or issue any warrants or proclamations which shall be made or issued only under the hand of the President himself."

The five orders or directions complained of in this application were *ex facie* not made under the hand of the President nor were they in compliance with section 34 of the Interpretation Act. They were not even signed by a Minister. On the face of the five orders the Minister specifically purports to exercise the powers conferred by section 8(1A) and as I have stated above no powers are conferred on the Minister by section 8(1A). These orders are therefore *ex facie* defective orders and are unlawful as they are not within the competence of the Minister to make. They can therefore give no legal justification for the present detention of the first five applicants and on this purely technical ground I must hold that they have shown that they are being unlawfully detained.

If authority is needed that a writ of *habeas corpus* will issue where an order, which is relied upon as justification for the detention of a person, is bad on its face, I need only refer to the judgment of Lord Wright in *Greene* v. *Secretary of State for Home Affairs* [1] at page 403 where he states:—

"It would be superfluous to point out that the basis of the conclusion here adopted is that the order and statement are good on their face — that is, that they show a competent exercise of a lawful authority. If an order or warrant is bad on its face, it can give no legal justification for the imprisonment. Thus, in *Bushell's Case* (1670), Vaugh, 135, a commitment which showed that it was to punish persons for giving a verdict of which the court did not approve, and which was said to be *contra plenam et manifestam evidentiam et contra directionam curiae in materia legis*, was held to be bad as showing a cause which was not lawful. It was pithily observed that the writ of *habeas corpus* was then (1670) the most usual remedy by which a man might be restored again to his liberty, if he had been against law deprived of it. Similarly, in *R.* v. *Browne, Corbet, etc.* (1686), 2 Show. 484, a warrant was held to be bad on its face because the warrant was under the King's own hand, without seal or the hand of any secretary or officer of state or justice."

As the sixth applicant, Chia Thye Poh does not contest the validity of the order of detention made against him under section 8(1)(a) it is necessary to consider the other contention put forward on behalf of all the applicants.

It is submitted that their detention is illegal or improper because the detention orders were made in bad faith. The joint affidavit of the applicants allege bad faith on the part of the Government in that the applicants belong to a party in opposition to the party now forming the majority in Parliament and in that the purpose of their detention was (i) to coerce and to subdue them into signing statements favourable to the ruling party and adverse to the people's interest, (ii) to coerce them into renouncing their political beliefs and convictions, (iii) to wreck their morale, and (iv) to force them to appear on the television to praise the ruling party and to condemn their own political comrades. They also allege they have been kept under detention in such conditions as to amount to punitive detention and that the conditions under which they are being detained support their allegation of bad faith.

In my view the fatal objection to this submission, assuming the orders of detention are *ex facie* good and valid orders, is that the good faith of the President has not been challenged. As the power to detain under the Internal

Security Act, 1960, is, as I have already indicated, entrusted by the legislature to the President alone and not to any Minister or to the Government or to the party in power, for any applicant to succeed on the ground of bad faith, he must not only show that the courts are entitled to enquire into the good faith or otherwise of the President of the Republic of Singapore, but, assuming the courts are so entitled, he must also allege and prove that the President and not some one else had acted *mala fide* in directing that he be detained under the Act.

On the ground that the five orders made relating to the first five applicants by the Minister of the Interior and Defence under section 8(1A) are *ex facie* defective orders and do not therefore provide legal justification for the present detention of the first five applicants I direct that an order be drawn up for their discharge from custody.

As regards the sixth applicant the rule *nisi* is discharged. As all the applicants have chosen to make a joint application and having regard to the grounds put forward by them in support of their joint application I order that the costs of this application are to be taxed as a whole and that the respondent do pay half the costs as so taxed.

Order accordingly.

KIAN AIK CHAN HUP KEE LTD. v. ANTHONYSAMY & ORS.

[O.C.J. (Chang Min Tat J.) March 4, 1968]
[Ipoh — Originating Motion No. 12 of 1967]

Workmen's Compensation — Claim at common law and claim under the Ordinance — Parents claiming in tort — Settlement reached without court proceeding — Claim by other dependants under Ordinance — Assessment by commissioner — Whether commissioner precluded from pursuing inquiry for compensation under Ordinance — Workmen's Compensation Ordinance, 1950, ss. 8(a), 27 & 41.

Workmen's Compensation — Injunction — Application for, to restrain commissioner from pursuing inquiry for compensation after settlement of damages under common law — Workmen's Compensation Ordinance, 1950, s. 41.

Words and Phrases — "Dependant" and "partial dependant" — Meaning of "partial dependant".

A. died from injuries sustained in an accident arising out of and in the course of his employment. His brothers and sisters applied for compensation under the Workmen's Compensation Ordinance, and assessment of $4,025.88 was made by the commissioner. In the meantime his parents obtained under the civil law, damages of $5,000 from his employers by compromise. In this application the employers prayed for a declaration that they had fully discharged their liability to all persons in respect of the death of *A.*, and for an injunction restraining the commissioner from pursuing any inquiry for compensation by reason of the death of *A.* The commissioner opposed the application and argued that there was nothing in the Ordinance on the facts of the case to prevent him from holding the inquiry.

Held, refusing the application: (1) on a proper interpretation of section 41 of the Ordinance, the employers were not entitled to the injunction they sought against the commissioner, there being no suit for damages instituted or prosecuted in any court;

(2) if the brothers and sisters of the deceased were dependants of the deceased within the meaning of the Ordinance then notwithstanding the acceptance by the parents of the damages under civil law, they were at law entitled to claim under the Ordinance.

Obiter: Where the deceased workman left only partial dependants then the amount of compensation shall be "such lump sum not exceeding in any case the amount payable as may be determined by the commissioner to be reasonable or proportionate to the loss suffered by such dependants". This, of course, does not mean that the maximum sum that can be awarded under the Ordinance cannot be awarded in the case of partial dependants, as conceivably there can be circumstances where the dependency, though partial, is nevertheless of such a degree as to justify the arbitrators to award the maximum sum that can be awarded as being reasonable and proportionate to the loss suffered.

For a claimant to succeed as a partial dependant, he must be one within the meaning of the Ordinance.

Cases referred to:—

(1) *Curtis* v. *Stovin* (1889), 22 Q.B.D. 512, 517.

(2) *Ditcher* v. *Denison* (1857), 11 Moore, P.C. 325, 337.

(3) *Avery & Ors.* v. *London and North Eastern Railway Co.* [1938] A.C. 606.

ORIGINATING MOTION.

P. Arulanandom for the applicants.

1st and 2nd respondents in person.

Sheikh Abdul Rahman bin Sheikh Abu Bakar (Legal Adviser, Perak) for the 3rd respondent.

Cur. Adv. Vult.

Chang Min Tat J.: In this application made by originating motion the employers of one A. Amaldass s/o Anthonysamy prayed for a declaration that they had fully discharged their liability to all persons in respect of the death of their employee, and for an injunction restraining the Commissioner for Labour, Perak, in his capacity as commissioner under the Workmen's Compensation Ordinance, 1950, from pursuing any inquiry for compensation by reason of the death of the employee.

The facts of the case, save for the one fact of dependency, are not in dispute.

A. Amaldass s/o Anthonysamy (hereinafter called the deceased), an employee of Kim Aik Chan Hup Kee Ltd., the applicants herein, died at the age of 16 on the 22nd March, 1966, from injuries sustained in an accident arising out of and in the course of his employment, in circumstances, however, which would indicate that his estate and his dependants had a *prima facie* case